

**CENTREDALE SUPERFUND SITE  
MEDIATION PROCESS AGREEMENT FOR AN INITIAL SESSION**

1. The United States, Emhart Industries Inc., Black & Decker, Inc., New England Container Co., Eli Lilly and Company, Univar USA Inc., Cal Chemical, Tanner Industries, Inc., Eastern Color & Chemical Co., and the "NECC Customer Group" (BASF Corp., BNS Co., CNA Holdings LLC, Cranston Print Works, Co., Duro Textiles, LLC, Exxon Mobil Corp., Lonza, Inc., Organic Dyestuffs Corp., Sequa Corp., Teknor Apex Co., The Original Bradford Soap Works, Inc., and Union Oil Company of California), collectively the "Parties," hereby agree to engage in an initial mediation session pursuant to this Mediation Process Agreement For An Initial Session (this "Agreement").

2. The majority of the Parties are currently in litigation in the United States District Court for the District of Rhode Island in the lawsuit Emhart Industries, Inc. v. United States Dept. of the Air Force et al., Civil Action No. 11-023S. The lawsuit relates to the Centredale Manor Superfund Site in Rhode Island.

3. This Agreement sets forth the terms and conditions under which the Parties will conduct the initial mediation session, seeking thereby to avoid or limit future disputes and disagreements regarding the mediation process. The term "initial mediation session" as used herein is in reference to the sessions on February 14 and 15, 2013 and any preceding time spent by the Mediator in preparation for the initial mediation session including any teleconferences with the parties, and is not intended to imply that any further mediation sessions will be conducted that will necessarily include all of the parties to this agreement or that the same terms and conditions herein will apply to any future mediation sessions that might be scheduled. Subject to the terms and conditions of this Agreement, the Parties agree as follows:

4. The Parties agree to seek an efficient and mutually beneficial resolution of their dispute and related issues through mediation with a third-party neutral mediator jointly selected by the Parties.

5. Participation In and Withdrawal From the Mediation Process

- (a) Participation. The "Parties" agree to be active participants in the initial mediation session. Each Party, at all times, shall be represented during the course of the initial mediation session by at least one person authorized to make recommendations concerning settlement or to bind that Party, as may be appropriate. Appropriate senior management for each Party shall be reasonably accessible as necessary via telephone or in person during the initial mediation session.

6. Selection of the Mediator and Payment of Fees

- (a) Selection of the Mediator

- (1) The Parties have selected Hon. James Robertson (Ret.) as the Mediator to conduct the mediation process, including the initial mediation session.
- (2) The Parties agree that, after selection of the Mediator, the United States shall have an opportunity to seek the necessary approvals within the United States government to fund the United States' share of the Mediator's fees and expenses, as set forth below in Section 6(b) of this Agreement.
- (3) The Parties are satisfied that the selected Mediator has the appropriate training, experience, and expertise to conduct the mediation process, will not be biased, will be available for the duration of the mediation process, and will charge reasonable fees, as set forth below in Section 6(b) of this Agreement. As may be appropriate before and during the mediation process, the Mediator will make disclosures to the Parties of any potential or actual conflicts of interest.

(b) Payment of Mediator

- (1) For the initial mediation session, the United States shall pay 25% (twenty-five percent), Emhart Industries and Black & Decker shall collectively pay 25% (twenty-five percent), New England Container shall pay 25% (twenty-five percent), and the remaining parties to the lawsuit shall pay 25% (twenty-five percent) for the cost of the mediation process, to be divided in equal shares among each individual party Eli Lilly and Company, Univar USA Inc., Cal Chemical, Tanner Industries, Inc., Eastern Color & Chemical Co., and the NECC Customer Group. Cal Chemical agrees to this arrangement for the initial mediation session only, and provided that the costs incurred by Cal Chemical for the initial mediation session do not exceed \$1,500. Tanner Industries, Inc. agrees to this arrangement for the initial mediation session only, and provided that the costs incurred by Tanner Industries, Inc. for the initial mediation session do not exceed \$1,500. Univar USA Inc. agrees to this arrangement for the initial mediation session only, and provided that the costs incurred by Univar USA Inc. for the initial mediation session do not exceed \$1,500. Unless Emhart and/or Black & Decker enter into a further agreement, nothing in this agreement shall be construed to obligate Emhart or Black & Decker to participate in any further mediation or to pay more than \$4,000 for the costs for the initial mediation. The Parties and the Mediator shall make best efforts to keep the cost of mediation process fair and reasonable.
- (2) For any mediation following the initial two-day phase of mediation, any parties continuing the mediation process will seek to agree on a new agreement, or an amendment to this agreement, covering funding of the subsequent mediation process.

- (3) The Mediator shall be compensated by the Parties as follows:
- (a) [REDACTED] per hour for mediation, plus a [REDACTED] per hour case management fee.
  - (b) [REDACTED] per hour for travel, plus a [REDACTED] per hour case management fee.
  - (c) The Mediator's necessary travel expense shall be reimbursed as follows:
    - i. Vehicle mileage costs, if required and necessary, shall be reimbursed at the then-current government rate of reimbursement, or actual rental car expenses if supported by a receipt.
    - ii. Lodging and Subsistence, if required and necessary, will be reimbursed at the then-current government rate if supported by actual receipts.
    - iii. Upon request, the United States will furnish the Mediator with the current government per diem and subsistence reimbursement and mileage rates. If necessary, the United States agrees to make best efforts, as are appropriate and legal, to assist the Mediator to obtain government rates for travel expenses. Government rates shall apply in subsections i. and ii. unless after the best efforts by the Mediator and the United States such rates are unavailable. If government rates are not available the Mediator shall attempt to obtain transportation and lodging at the lowest reasonably available cost.
- (4) The Mediator shall provide to appropriate representatives of each Party where, for purposes of this Agreement, the NECC Customer Group is considered to be one Party, monthly invoices, including a detailed description of all fees and expenses of the Mediator and the amount owed by each Party.
- (5) Each Party shall be independently responsible for its own expenses associated with the initial mediation session, including its respective share of the fees and expenses for the Mediator, its own attorneys' fees, or any expert expenses that Party deems necessary for its participation in the initial mediation session.
- (6) The above (or any) requirement for payment or obligation of funds by the United States shall be subject to the availability of appropriated funds

legally available for such purpose, and no provision of this Agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, and 1511-1519. In the event the United States fails to meet its financial obligation to the Mediator, no other Party shall be responsible either to the Mediator or the United States for such obligation.

7. The Initial Mediation Session

(a) The Mediator

- (1) In mediation, a mediator acts as a third-party neutral in a process in which the Parties, with the assistance of a mediator, collaboratively and collectively seek to (a) identify issues; (b) develop potential alternatives and approaches to resolve those issues; and (c) resolve those issues.
- (2) The Mediator shall assist the Parties to identify and communicate the interests underlying their dispute and help the Parties to develop their collaborative efforts into any settlement agreement.
- (3) In order to accomplish the above-stated goals, the Mediator, as he and the Parties deem appropriate, may conduct the initial mediation session to include the following activities: confer with the Parties; review written information submitted by the Parties; request position papers from each Party outlining the legal and factual issues in the dispute or case as well as the range of options to settle the case or dispute; conduct one or more face-to-face "joint sessions" where all Parties shall be present; hold private sessions with one or more Parties to assist the Parties in trying to find a mutually acceptable solution; and hold sessions and discussions with the Parties on the phone or in person.
- (4) Any Party may request that the Mediator excuse other Party/Parties from any joint session to discuss or share confidential information with the Mediator. The Mediator will not divulge any information provided in confidence during the mediation process to any other Party without the confiding Party's express permission.
- (5) The Parties and the Mediator understand that the Mediator has no authority to decide any or all of the matters in dispute and that the Mediator is not acting as an advocate or attorney for any Party.
- (6) The Mediator shall ensure that each Party shall have a reasonable amount of time during the initial mediation session to present its position with respect to the issues in mediation. The Mediator shall ensure also that each Party has a reasonable amount of time to provide a response to another Party's position.

- (7) The purpose of this mediation shall be to assist the Parties in reaching their own agreement, and the Mediator shall conduct the mediation in a fair and neutral manner to facilitate the resolution of the dispute between the Parties. The Mediator shall work for the benefit of the Parties and be guided by the provisions of this Agreement.
  - (b) Schedule. The Parties will conduct the initial mediation session on February 14 and 15, 2013 at JAMs offices in Washington, D.C., preceded by one or more teleconferences with the Mediator between February 4 and 14. The Parties estimate that the initial mediation session will take approximately 16 hours. This provision does not limit the duration of the initial mediation session. The Parties shall work independently or with the Mediator, as necessary, to establish a schedule for any subsequent mediation process.
8. Agreement of the Parties
- (a) No Party shall be bound by anything said or done during the initial mediation session unless a written settlement is reached, executed, and approved by all the Parties reaching such settlement. If an agreement is reached by any Parties through mediation that agreement shall be reduced to writing.
  - (b) The Parties make no admission of fact or law, responsibility, fault, or liability by entering into and participating in the initial mediation session, by entering into this Agreement, or by submitting any final agreement for approval.
  - (c) It is explicitly recognized that the trial attorneys and other representatives of the United States, including the Department of Justice ("DOJ") and other federal agencies, do not have the authority to compromise the claims of the United States (or its agencies). Therefore those attorneys and representatives for the United States do not have the ultimate authority to agree to the terms of any proposed agreement or settlement. That authority is vested with the Assistant Attorney General of the Environment and Natural Resources Division and/or, as appropriate, the Deputy or Associate Attorney General of the United States. However, if the mediation is successful and a final written agreement is reached by all the Parties, the attorneys for the United States will promptly make appropriate recommendations within the government concerning settlement of the case.
  - (d) Upon signature by any settling private parties, and final approval by the appropriate officials within DOJ and its client agencies, the settlement agreement, if required, will be lodged in agreed upon form with the United States District Court for the District of Rhode Island and a notice of the lodging will be published in the federal register for public comment as required by Section 122 of CERCLA, 42 U.S.C. § 9622 and 28 C.F.R. § 50.7.

- (e) Nothing contained in this Agreement shall be construed to limit the authority of the United States to undertake any action pursuant to applicable law or regulation. This Agreement in no way affects or relieves any Party of its responsibility to comply with any federal, state, or local law or regulation.

9. Confidentiality

- (a) The mediation process, including the initial mediation session contained in this agreement, is a confidential process. That process, including any documents submitted to or prepared by the Mediator, and any statements made during the mediation process are for settlement purposes only, are confidential, and shall be subject to Rule 408 of the Federal Rules of Evidence and 5 U.S.C. § 574, regardless of whether those documents or statements were exchanged or made in the presence of the Mediator. All information provided to the Mediator is confidential provided however, that information which is otherwise admissible or discoverable or known or available to a Party, or otherwise required to be disclosed under applicable law, shall not be rendered confidential, inadmissible or non-discoverable because of its use in the mediation process. Except for documents and statements covered by this paragraph, including offers of compromise and settlement, this agreement shall not preclude a party from requesting in discovery information or documents that it learns of in the mediation process.
- (b) Except as otherwise provided for in this Agreement, the Parties shall not disclose to any person not a Party to this Agreement, including but not limited to, the press, any information regarding the substance of the mediation process, including the initial mediation session, including this Agreement, or the Parties' communications, positions, negotiations, proposals, or settlement offers. The existence of the mediation may be disclosed.
- (c) Each Party may share information from the mediation process, including the initial mediation session, with its insurers and its litigation consultants or experts retained to assist with the mediation and/or any existing or resulting litigation, and the United States may share information from the mediation process among its various departments, agencies, or instrumentalities for any appropriate purpose (including informing decision makers and making recommendations within the Department of Justice and its client agencies concerning settlement with respect to these matters or the case), provided that each insurer, consultant, expert, or federal component is shown a copy of this Agreement, is informed of the confidential nature of the information disclosed in the mediation process, including the initial mediation session, and agrees to comply with this Agreement. The United States also reserves the right to provide public notice of any final settlement achieved by, after, or as a result of the mediation process, including the initial mediation session as may be required by law or established government policy, and to publish a press release concerning any final settlement achieved by or after the mediation process.



- (d) No Party may subpoena any documents prepared by or for the Mediator or subpoena the Mediator to testify as a witness regarding the mediation process, including the initial mediation session, or its substance. The Mediator shall not voluntarily testify on behalf of any Party or participate as a consultant or expert in any federal or state judicial or administrative proceeding regarding the case or issues in or relevant to this case or the mediation process, including the initial mediation session, and shall provide such notice to all Parties in the event that the Mediator receives a request or subpoena to so consult or testify.
- (e) The confidentiality provisions of this Agreement shall remain in full force and effect without regard to whether any legal actions or issues arising out of the case are settled or concluded by final judgment or otherwise, and shall survive termination of this Agreement.
- (f) Disclosure of information to the Mediator by a Party, whether verbal or documentary, shall not be deemed to waive any claim of privilege or exemption from discovery that might be asserted with respect to the information disclosed, nor shall the submission by any Party of documents, materials or information pursuant to the mediation process be deemed to be a waiver of any privilege applicable to such documents, materials or information under any Federal or State law or rule of discovery or evidence, nor shall such submission or disclosure be deemed a failure to take measures to protect such information from a waiver of a claim for Confidentiality and/or other failure to protect it from public disclosure. Any confidential document provided during the negotiation process shall be stamped or clearly identified as being a "Privileged and Confidential Settlement Document".
- (g) These confidentiality provisions shall not apply to or restrict the use of information or documents which now or hereafter become public knowledge without violation of the terms of this Agreement, or which are otherwise admissible or discoverable by any Party pursuant to applicable discovery procedures, and such information that is otherwise admissible or discoverable shall not be rendered confidential, inadmissible or non-discoverable because of its use in the mediation process.

#### 11. Miscellaneous

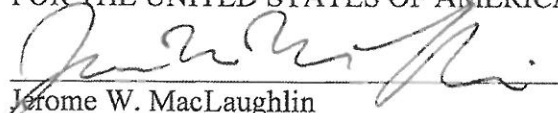
- (a) This Agreement will become final and effective following:
  - (i) Execution of the Mediation Agreement for An Initial Session by the Parties and the Mediator; and
  - (ii) Execution of the funding agreement (Form OBD 47 Contract) by the United States, whichever is later.

- (b) The provisions of this Agreement shall apply to and be binding upon each Party to the mediation process, its counsel, officers, agents, employees, successors and assigns.
- (c) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one instrument.
- (d) Each of the undersigned representatives of each Party to the mediation process represents that he or she is authorized to execute and bind that Party to this Agreement. By signature below, each representative acknowledges that representative has read, understands and agrees to this Agreement.



THE UNDERSIGNED PARTY enters into the Centredale Superfund Site Mediation Process Agreement

FOR THE UNITED STATES OF AMERICA:

  
\_\_\_\_\_  
Jerome W. MacLaughlin

Senior Counsel

U.S. Department of Justice

Environment & Natural Resources Division

P.O. Box 7611

Washington, D.C. 20044

Feb 4, 2013  
Date

THE UNDERSIGNED PARTY enters into the Centredale Superfund Site Mediation Process Agreement

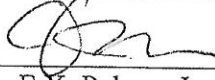
FOR

Enbridge & Blend & Products  
Jan R. Pringle  
Legal Counsel & CO

Feb 6, 2013  
Date

THE UNDERSIGNED PARTY enters into the Centredale Superfund Site Mediation Process Agreement

FOR NEW ENGLAND CONTAINER CO. \_\_\_\_\_

  
\_\_\_\_\_  
John F.X. Peloso, Jr.  
Its Attorney

February 4, 2013  
\_\_\_\_\_  
Date

THE UNDERSIGNED PARTY enters into the Centredale Superfund Site Mediation Process Agreement

FOR ELI LILLY AND COMPANY:



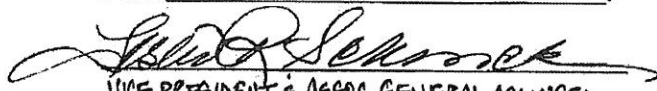
John A. Ferroli  
Dykema Gossett PLLC  
300 Ottawa Avenue, N.W.  
Suite 700  
Grand Rapids, MI 49503

02/02/2013

Date

THE UNDERSIGNED PARTY enters into the Centredale Superfund Site Mediation Process Agreement


FOR UNIVAR USA INC.:

  
VICE PRESIDENT & ASSOC. GENERAL COUNSEL  
17425 NE UNION HILL ROAD  
REDMOND, WA 98052

2/4/13  
Date

THE UNDERSIGNED PARTY enters into the Centredale Superfund Site Mediation Process Agreement

FOR CAL CHEMICAL CORPORATION:

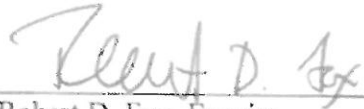


Ruth H. Silman  
NIXON PEABODY LLP  
100 Summer Street  
Boston, MA 02110

4 February 2013  
Date

THE UNDERSIGNED PARTY enters into the Centredale Superfund Site Mediation Process Agreement

FOR TANNER INDUSTRIES:



Robert D. Fox, Esquire  
Manko, Gold, Katcher & Fox, LLP  
401 City Avenue - Suite 500  
Bala Cynwyd, PA 19004

2/5/13

Date



THE UNDERSIGNED PARTY enters into the Centredale Superfund Site Mediation Process Agreement

FOR Eastern Color Chemical Co.  
My J Benik Date Feb. 6, 2013

Gregory L. Benik  
Counsel for  
Eastern Color Chemical Co.

Benik Associates PC  
128 Dorrance St. Suite 450  
Providence, RI 02903

401 454-0054  
gbenik@jperi.com

THE UNDERSIGNED PARTY, where the NECC Customer Group of 12 companies, listed below, is considered for purposes of the mediation and this Agreement as one "Party," enters into the Centredale Superfund Site Mediation Process Agreement

FOR NECC CUSTOMER GROUP:

David B. Graham  
David B. Graham

Feb 4, 2013  
Date

Kaufman & Canoles, P.C.  
4801 Courthouse St., Suite 300  
Williamsburg, VA 23188

Howard Grubbs  
Howard Grubbs


Feb 4, 2013  
Date

Womble, Carlyle, Sandridge & Rice  
550 South Main St., Suite 400  
Greenville, SC 29601

BASF Corp.  
BNS Co.  
CNA Holdings LLC  
Cranston Print Works, Co.  
Duro Textiles, LLC  
Exxon Mobil Corp.  
Lonza, Inc.  
Organic Dyestuffs Corp.  
Sequa Corp.  
Teknor Apex Co.  
The Original Bradford Soap Works, Inc.  
Union Oil Company of California

THE UNDERSIGNED PARTY enters into the Centredale Superfund Site Mediation Process Agreement

FOR THE MEDIATOR:

 for 2/7/13  
Date

JAMS, *The Resolution Experts*  
555 13<sup>th</sup> Street NW, Suite 400W  
Washington, DC 20004  
202-533-2024